1951. File No. O.B.R.T/51

Legal DEPARTMENT
A BRANCH

Subject: Opinions under the Bombay Revenue Tribunal Act 1939

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File No. O.B.R.T/51

Std. Sectt. Slip 24 B e.

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C O N T E N T S.

Legal Department Vol. No. O.B.R.T./1951.

Sr.No.	Compilation No.	Subject	pages
	O.B.R.T./1951	Opinions under the Bombay Revenue Tribunal Act.	
1.	O.No. 975/16-1-51.	Question whether the Collector can levy extra N.A. assessment under clause 3(ii) of the Agreement for the entire Revenue year in respect of the main building which had been unauthorisedly used as an Hospital instead of as a residence.	
2.	R.I.No.4720/9-3-51 O.No.11559/21-7-51.	Reference from the President, Bombay Revenue Tribunal regarding Appeal filed by ~~the~~ shri Anandlal Mageshwar Pandya against the order, of the Collector, Baroda, No.L.N.D. 1116/A,dt.8-8-1950. Question : (1)Whether upon the terms of the grant, the Collector was legally competent, in the circumstances, to direct forfeiture of the land granted upon the merger of the ~~land granted upon the~~ state of Mandwa, and if not (2)whether the Collector should upon the merger of the state of Mandwa, direct under the provisions of sec.79A of the land Revenue Code, the eviction of the grantee for breach of the condition of the grant	

Sd..
23-11-55

S.C.- 3-5.

Office of the R.L.A.

This point No. (1) on page 2 above is referred to the R.L.A. for opinion. It seems that the Collector has levied extra N.A. assessment under clause 3(ii) of the Agreement for the en ire Revenue year in respect of the main building measuring 373 square yards, which had been unauthorisedly used as an hospital, instead of as a residence. The appellant has raised the point that the levy of extra N.A. assessment for the main building should be for the actual period of occupation i.e. from 1-8-1939 to 20-11-1941.

As the Collector has levied the Extra N.A. assessment under clause 3(ii) of the Agreement, it must be presumed that the prohibited appropriation of the building for hospital use is now permitted by theCollector. Clause 3(ii) lays down that where such prohibited appropriation is permit ed by the Collector the applicant shall be liable to pay from the da te of the appropriation, in respect of the land so appropriated, such enhanced assessment notw exceeding Rs. 24 per 100 sq. feet, as the Collector may di deem fit to impose. Clause 3(ii) read s a whole means that the enhancement on account of the prohibited appropriation is to be a permanent addition to the original amount under the agreement. Although the Collector could have charged the extra N.A. assessment for the revenue year, in view of the discontinuance of the user before the end of the year. It would be more equitable to charge it only for the period from 1-8-1939 to 30-11-1941, which was the period of the

actual . . .

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actual unauthorised use of the building as an hospital.

Sd./ 15-11

Remembrancer of Legal Affai
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U.R. to R.D. NO. 975 dated 16th January 1951.

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No. Pprs/127/1951,
Bombay 2nd March 1951.

From

Shri K.B. Wassoodew,
President,
Bombay Revenue Tribunal,

To

The Remembrancer of Legal Affairs.
and Secretary to Government
Legal Department.

Sir,

I have the honour under the provisions of Regulation 14 of the Bombay Revenue Tribunal Regulation, 1939 to forward herewith the record and proceedings in the matter of the appeal by such Anandlal Nageshwar Pandya against the order of the Collector of Baroda, No. L.N.D. 1116/A, dated 8th August 1950 directing the forfeiture of S.Nos. 81,82/1,2, and 3 and84 of Mandva for breach of the conditions of the tenure on which the land was granted to the appellant upon its compulsory acquisition ~~lated below.~~ for favour of your opinion on the question formulated below.

2. The terms of the grant are contained in an agreement, dated 29th May 1948 (p.7. batch I). The state Authorities of Mandva made the grant for constructing an Electric Power House Saw ills and a Ginning Factory. It appears that it was represented by the grantee that the Ginning Factory and the Saw Mills were constructed on the land but it was found upon subsequent enquiry that the grantee had sublet the land to one Shri Anilkumar and that the latter had erected a rice and floor mill. Since the grant, the power House has not been constructe and the excuse put forward by the grantee is that the latter w not given facilities by the State Authorities as promised on account of the merger. There is a prohibition in the grant against the use of the land for any purpose other than the one specified in paragraph 1. But there is no period fixed for completing the constructions; nor is there ~~in no period if no~~ a penalty clause provided in the agreement for its breach. Th grant being a grant of a building site, there can be no questi according to the law prevailing in the Bombay State, of converting upon an application of the owner, agricultural la

to non-agricultural pruposes on certain conditions.on the analogy of Section 67 of the land Revenue Code.

3. On the above facts the questions raised for your opinion are these.

(1) Whether upon the terms of the grant, the Collector was legally competent, in the circumstances, to direct forfeiture of the land granted upon the merger of the State of Mandva and, if not,

(2) whether the Collector could, upom the merger of the State of Maddva, direct, under the provisions of Section 79 A of the Land Revenue Code, the - eviction of the grantee for breach of the conditions of the grant.

YOurs faithfully
K.B.Wassoodew,
President,
Bombay Revenue Tribunal

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No. 11559
Office of the
Remembrancer of Legal Affairs.
Bombay Castle (Bombay No.1) 21st July 1951

To

The President,
Bombay Revenue Tribunal,
46-C Marden Road, Pumbala Road
Bombay.

Subject.-Appeal filed by Shri Anandlal Nageshwar Pandya against the order of the Collector Baroda No.L.N.D.III6/A, dated the 6th August 1950,

Sir,

With reference to your letter No.Ppts/127/1951 dated the 2nd March 1951 on the above subject, I have the honour to enclose herewith my opinion in the matter.

The three files received with your ~~xx~~ letter under reference are returned herewith.

Yours faithfully.

Sd/ 21-7-

Remembrancer of Legal Affairs.

KML/17

S.C:

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Office of the R.L.A.

This is a reference from the President of the Revenue Tribunal under the provisions of Regulation 34 of the Bombay Revenue Tribunal Regulations, 1939, for opinion of the R.L.A. on the following two points

1. Whether upon the terms of the grant, the Collector was legally competent, in the circumstances, to direct forfeiture of the land granted, upon the merger of the State of Mandwa, and if not

2. Whether the Collector could, upon the merger of the State of Mandwa, direct under the provisions of section 79A of the Land Revenue Code, the eviction of the grantee for breach of the condition of the grant.

In this case there was no clause in the Agreement for forfeiture of the lease on the breach of any terms or conditi There was also no time limit fixed for the construction of t three buildings. But there was a clause that the land shall not be used for any purpose other than those marked in the agreement.

The inquiry made by the Collector goes to show that building was constructed by the lessees till 1950. But in absence of a forfeiture clause in the lease the failure to construct the buildings will not enable the lessor to for the lease. Section 79A of the Land Revenue Code will al be helpful. That section provides that any person unauthor occupying, or wrongfully in possession, of any land, to or occupation of which he is not entitled. or has ceased entitled by reason of any provisions of the Act, may be summarily evicted by the Collector. In the present case period of the lease is 51 years from 1946. Hence, prima the tenant is entitled to the use and occupation of the that period. Nor does the agreement provide that the t would cease to be entitled to the use and occupation o on the breach of any condition, or the happening of any during the period of the tenancy.

It seems that the Government have themselves laid

several Resolutions from time to time that section 79A cannot be used for evicting the person inpossession unless the agreement provided that the right to occupy would come to an end on the breach of the terms and conditions of the grant. (see Govt. Resolutions quoted at page 462 of Gupte's Revenue Code 3rd Edn.)

Section 79A of the Bombay Land Revenuc Code applies to cases in which a person has ceased to be entitled to the use and occupation of any land by reason of any of the provisions of the Code, or by virtue of any of the conditions lawfully annexed to the tenure under section 62, 67 of 68. In this case the land was granted by the Mandva State with a lease for 51 years. It was not a grant to which the provisions of sections 62, 67 or 68 could apply. Nor is it a case which falls under section 48 to which the provisions of sub-section (4) of that section could apply. The rights of the parties i.e. the Bombay State and the lessee would be governed by the terms of the lease. The lease itself does not contain a provision for re-entry. If the lessee has committed a breach of th e conditions of the lease, the only course open to Government is to give notice to terminate the lease. The provisions of section 79A or 48(4) of the Bombay Land Revenue Code will not apply to this case.

Neither under the terms of the grant, nor under the provisions of section 79A, would the order of forfeiture of tenancy be justified in this case.

J.R. Dhurandur
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R membrancer of Legal Affai

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